

REMARKS

Claims 1-5, 7-10, 12-19, 21-22 and 25-29 are currently pending. Claims 6, 11, 20, 23 and 24 have been cancelled. Claim 1 has been amended to incorporate the limitations of original claim 6. Claim 3 has been amended to correct the antecedent basis of the terms in the claim in light of the amendment to claim 1. Claim 7 has been amended to depend from claim 1. Claim 14 has been amended to incorporate the limitations of original claim 20. Claim 17 has been amended to correct the antecedent basis of the terms in the claim in light of the amendment to claim 14. Claims 21 and 22 have been amended to depend from claim 14. Claim 26 has been added to indicate that the first and second flat sides of the bar of claim 1 have a diameter greater than the intermediate portion of the bar. Claim 27 has been added to indicate that the bar of claim 1 is a rounded bar. Claim 28 has been added to indicate that the ring-shaped bar of claim 14 has a diameter narrower than the diameter of the first and second flat sides. Claim 29 has been added to indicate that the ring-shaped bar of claim 14 is a rounded bar. Basis for these new claims can be found in FIG.'s 1-4. Paragraph 0011 of the specification has been amended to delete a blank space which was inadvertently included in the application. Applicant submits that no new matter has been added by these amendments.

Claims 1-5, 7-10, 12-19, 21-22 and 25 currently stand rejected. Claims 1-5, 9, and 11-19 stand rejected under 35 USC § 102(b), as being anticipated by U.S. Patent No. 6,260,900 to Scott (hereinafter "Scott"). Claim 25 stands rejected under 35 USC § 102(b), as being anticipated by U.S. Patent No. 4,296,909 to Haeussler (hereinafter "Haeussler"). Claims 6-8, 10, 20-23 stand rejected under 35 USC § 103(a) as being obvious over Scott. Applicant traverses these rejections for at least the following reasons.

Rejections under Scott

§102 Rejections

Claims 1-5, 9, and 11-19 stand rejected under 35 USC § 102(b) over Scott. The Manual of Patent Examining Procedure "MPEP" § 2131 states that, in order to anticipate a claim, a reference must teach every element of the claim:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)."

Applicant submits that the Scott reference has failed to disclose each and every element of claims 1-5, 9, and 11-19.

Claim 1 and 14 are directed to concrete anchors comprising a bar which has "a first indentation, the first indentation being located on an inner portion of the bar, opposite a first flat side, and a second indentation, the second indentation being located on an inner portion of the bar, opposite a second flat side." See claims 1 and 14. Claims 2-5, 9, 12-13 depend directly from claim 1 and therefore have all the limitations of claim 1. Claims 15-19 depend directly or indirectly on claim 14 and therefore have all the limitations of claim 14.

Applicant submits that the Scott reference fails to disclose a concrete anchor having a bar which has "a first indentation, the first indentation being located on an inner portion of the bar, opposite a first flat side, and a second indentation, the second indentation being located on an inner portion of the bar, opposite a second flat side." The ring portion of Scott contains no "indentations" on the inner portion of the aperture 22. As Scott fails to contain such a disclosure the reference fails to anticipate claims 1 and 14, as well as the claims which depend from these claims. Applicant respectfully requests that the Examiner withdraw the rejection to the claims on this ground.

§103 Rejections

Claims 6-8, 10, and 20-23 stand rejected under 35 USC § 103(a) as being obvious over Scott. The MPEP § 2141.03 states:

"To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970)."

Applicant respectfully submits that the Office Action has failed to put forth a *prima facie* case of obviousness, as the Scott reference fails to teach or suggest all of the limitations of claims 1-5, 7-10, 12-19, 21-22 and 25-29.

All of the claims contain the limitation of a bar having “a first indentation, the first indentation being located on an inner portion of the bar, opposite a first flat side, and a second indentation, the second indentation being located on an inner portion of the bar, opposite a second flat side.” The Examiner acknowledges that the Scott reference fails to disclose first and second indentations or their positioning with respect to the first and second flat sides. The Examiner asserts, however, that such limitations are a matter of an obvious design choice. The Examiner cites no support or prior art to support this position. The Scott reference itself contain no teaching or suggestion of such limitations. The Federal Circuit has recognized that

“It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.” *In re Zurko*, 258 F.3d 1385, 59 USPQ2d at 1697 (Fed. Cir. 2001).

Applicant respectfully submits that as the Examiner has failed to show support for the teaching or suggestion of a bar having “a first indentation, the first indentation being located on an inner portion of the bar, opposite a first flat side, and a second indentation, the second indentation being located on an inner portion of the bar, opposite a second flat side,” that the Office Action fails to support a *prima facie* case of obviousness.

The Examiner further indicates that Applicant must show the “criticality” with respect to the limitations of claims 6-8, 10, and 20-23. Applicant is unaware of any legal obligation to show the criticality of claim limitations to dispute a *prima facie* case of obviousness, with the exception of claims involving ranges of values.

While Applicant disputes the need to show the “criticality” of such limitations, the limitations of the present invention do provide benefits that are not provided by the cited prior art. The concrete anchor set forth in claims 1-5, 7-10, 12-19, 21-22 and 25-29 claim a concrete anchor comprising a bar having a first indentation opposite a first flat side, and a second indentation having a second flat side. This claimed design allows for an aperture to be provided with a greater width in the midsection of the aperture, while maintaining the strength of the

anchor. This design also allows for the anchor to be crafted by drop forging, allowing for a stronger anchor. The wider diameter of the first and second flat sides also leads to greater strength of the anchor. The wider aperture of the anchor provides for standard lifting or hoisting mechanism to be used. For instance a standard crane hook can be used to connect the concrete anchor. In contrast, the anchor disclosed in the Scott reference is designed to be used with “ring clutches and bail lift clutches.” See Abstract of Scott. Both the disclosed “oval” aperture design of Scott, as well as the flattened plate design of Scott (See col. 4, lines 30-46) are specifically designed to be engaged by ring and bail clutches. Such clutches as disclosed in U.S. Patent No. 4,634,164, U.S. Patent No. 4,437,642, U.S. Patent No. 4,700,979 and U.S. Patent No. 4,671,554 (cited by Scott on col. 1, lines 62-67 and col. 2, lines 1-5) show that the clutches have a slot shaped to fit the rectangular shape of the foot 21 and engages snugly with both the aperture of the Scott anchor, as well as the sides and the top of the anchor. In contrast the present anchor is designed to be lifted by standard lifting and hoisting hooks, and not just clutch type connectors. In one embodiment the bar of the anchor is a rounded bar which provides a better connection to a standard rounded hook connector. Scott teaches away from such designs as this would interfere with the proper connection of a ring or bail clutch hoist.

Applicant respectfully submits that the Scott reference fails to teach or suggest all of the limitations of claims 1-5, 7-10, 12-19, 21-22 and 25-29 and therefore cannot support a *prima facie* case of obviousness. Applicant respectfully requests the Examiner withdraw the rejection to the claims on this ground.

Rejections under Haeussler

Claim 25 stands rejected under 35 USC § 102(b), as being anticipated by U.S. Patent No. 4,296,909 to Haeussler. As discussed above, in order to anticipate a claim, a reference must teach every element of the claim. Applicant submits that the Haeussler reference fails to teach every element of claim 25.

Claim 25 depends from claim 14 and therefore contains all the limitations of claim 14. Claim 14 claims a concrete anchor comprising “a ring-shaped bar at least partially defining an aperture therethrough, the ring-shaped bar having a first end, and a second end positioned adjacent the first end; a first indentation, the first indentation being located on an inner portion of

the bar, opposite a first flat side; a second indentation, the second indentation being located on an inner portion of the bar, opposite a second flat side; and a foot coupled to the first end and the second end of the ring-shaped bar.”

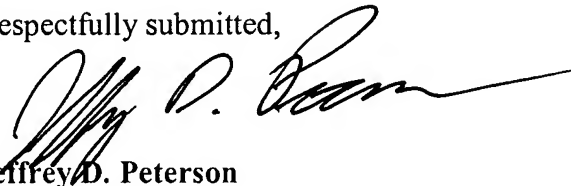
The Haeussler patent discloses an apparatus for forming a recess around a pickup bolt. The reference fails to disclose any concrete anchor having a ring-shaped bar, a first and second indentation, or a first and second flat side. See claim 14. The Haeussler patent only discloses a stem bolt 4 which is embedded in concrete.

As the Haeussler patent fails to disclose all of the elements of claim 25, Applicant submits that the reference fails to anticipate claim 25.

SUMMARY

Based on the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and a favorable action thereon is respectfully requested. Should the Examiner feel that any other point requires consideration or that the form of the claims can be improved, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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